

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LARISA BOWERS,

Case No.: 2:23-cv-00694-APG-BNW

Plaintiff

Order to Show Cause Why This Action Should Not Be Remanded for Lack of Subject Matter Jurisdiction

THE PROGRESSIVE CORPORATION
AKA PROGRESSIVE CASUALTY
INSURANCE COMPANY,

Defendant

Defendant The Progressive Corporation aka Progressive Casualty Insurance Company

10 removed this case from federal court. ECF No. 1. In the removal petition, Progressive contends
11 it was improperly named. If Progressive believes it has been incorrectly identified, it must file a
12 motion to correct the caption.

Additionally, Progressive has not met its burden of showing removal was proper.

14 Progressive removed based on diversity jurisdiction. However, Progressive does not fully
15 identify its citizenship because it does not state where it has its principal place of business. 28
16 U.S.C. § 1332(c)(1).

17 Moreover, Progressive provides no basis to conclude that the amount in controversy has
18 been met. If removal is sought based on diversity of citizenship, “the sum demanded in good
19 faith in the initial pleading shall be deemed to be the amount in controversy.” 28 U.S.C. §
20 1446(c)(2). If the initial pleading seeks nonmonetary relief or “a money judgment, but the State
21 practice either does not permit demand for a specific sum or permits recovery of damages in
22 excess of the amount demanded.” then “the notice of removal may assert the amount in

1 controversy,” but only “if the district court finds, by the preponderance of the evidence, that the
2 amount in controversy exceeds the amount specified in section 1332(a).” 28 U.S.C. § 1446(c)(2).

Federal courts are courts of limited jurisdiction. . . . It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction. . . . This burden is particularly stringent for removing defendants because the removal statute is strictly construed, and any doubt about the right of removal requires resolution in favor of remand.

Corral v. Select Portfolio Servicing, Inc., 878 F.3d 770, 773–74 (9th Cir. 2017) (simplified).

8 “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first
9 instance.” *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam). Where “it is unclear
10 what amount of damages the plaintiff has sought,” as with claims governed by Nevada Rule of
11 Civil Procedure 8(a), “then the defendant bears the burden of actually proving the facts to
12 support jurisdiction, including the jurisdictional amount.” *Id.*

13 To determine the amount in controversy on removal a court may consider the facts
14 alleged in the complaint and in the notice of removal, and may “require the parties to submit
15 summary-judgment-type evidence relevant to the amount in controversy at the time of
16 removal.” *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (quoting
17 *Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1335-36 (5th Cir. 1995)). A court also has
18 discretion to consider a plaintiff’s formal judicial admission that the amount in controversy is
19 met. *Id.* at 376.

20 In *Gaus*, the Ninth Circuit vacated the district court’s grant of summary judgment
21 because the federal court lacked subject matter jurisdiction; the Ninth Circuit remanded with
22 instructions to remand the case to the state court. 980 F.2d at 565, 567. The plaintiff had filed
23 suit in Nevada state court, seeking damages “in excess of \$10,000.” Upon removal, the

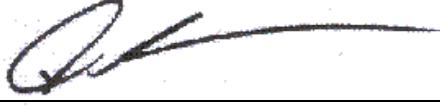
1 removing defendant alleged that “the matter in current controversy . . . exceeds the sum of
2 \$50,000.” *Id.* at 565. The Ninth Circuit found that the removing defendant “offered no facts
3 whatsoever to support the court’s exercise of jurisdiction,” and held that “[t]his allegation,
4 although attempting to recite some ‘magical incantation,’ neither overcomes the ‘strong
5 presumption’ against removal jurisdiction, nor satisfies [the removing defendant]’s burden of
6 setting forth, in the removal petition itself, the underlying facts supporting its assertion that the
7 amount in controversy exceeds \$50,000.” *Id.* at 567.

8 By the complaint’s allegations, the plaintiff incurred over \$20,000 in medical bills but
9 she recovered \$25,000 from the tortfeasor’s insurance. ECF No. 1-1 at 3-4. She was willing to
10 settle her underinsured claim with Progressive for \$17,000. *Id.* at 4. Progressive has not
11 presented any other evidence to suggest that more than \$75,000 is at issue in this case. I
12 therefore cannot exercise jurisdiction in this matter. However, before remanding for lack of
13 subject matter jurisdiction, I will permit Progressive to present any evidence relevant to its
14 citizenship and the amount in controversy at the time of removal.

15 I THEREFORE ORDER that by May 19, 2023, The Progressive Corporation aka
16 Progressive Casualty Insurance Company shall show cause in writing why this action should not
17 be remanded for lack of subject matter jurisdiction.

18 I FURTHER ORDER that if the defendant believes it has been incorrectly identified, it
19 must file a motion to correct the caption.

20 DATED this 5th day of May, 2023.

21 
22 ANDREW P. GORDON
23 UNITED STATES DISTRICT JUDGE